

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|---------------------|---|----------------------|
| PRESTON CATCHINGS, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | C.A. No. 03-284 Erie |
| |) | |
| LT. MARROW, et al., |) | |
| Defendants. |) | |

MEMORANDUM ORDER¹

Plaintiff's civil rights complaint was received by the Clerk of Court on September 5, 2003 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's report and recommendation, filed on April 20, 2005, recommended that Defendants' motion [Doc. No. 33-1] to dismiss the amended complaint or, in the alternative, for Summary Judgment [Doc. No. 33-2] be granted and that the amended complaint be dismissed for failing to state a claim upon which relief can be granted as against Defendant Telega. The parties were allowed ten (10) days from the date of service to file objections. Plaintiff subsequently mailed to this Court a document, postmarked May 5, 2005, in the nature of objections to the Magistrate's Report and Recommendation although styled as an "appeal." By order dated June 8, 2005, we made the Plaintiff's objections part of the record and directed Defendants to file a response thereto.

¹ We note that this case is presently before the Third Circuit on Plaintiff's appeal from this Court's order of March 31, 2005 affirming an order entered by Magistrate Judge Baxter on March 7, 2005. Because of the interlocutory nature of those orders and the likelihood that Plaintiffs' appeal will be dismissed as premature, we may proceed with disposing of the instant matter. See Mondrow v. Fountain House, 867 F.2d 798, 800 (3d Cir. 1989) (premature notice of appeal does not divest the district court of jurisdiction).

After de novo review of the Amended Complaint and the documents in the case, together with the Report and Recommendation, Plaintiff's objections and the Defendants' response thereto, the following order is entered:

AND NOW, this 12th Day of July, 2005, IT IS HEREBY ORDERED that the Defendants' Motion to Dismiss [Doc. #33-1] or, in the alternative, Motion for Summary Judgment [Doc. # 33-2] is GRANTED, and JUDGMENT be and hereby is ENTERED in favor of DEFENDANTS Morrow, Ransom, Wolfe, Rieder and Ziets and against PLAINTIFF. IT IS FURTHER ORDERED that, pursuant to the authority granted to courts in the Prison Litigation Reform Act, Plaintiff's amended complaint be dismissed for failing to state a claim upon which relief can be granted as against Defendant Telega.

The report and recommendation of Magistrate Judge Baxter dated April 20, 2005 is adopted as the opinion of this Court. The Clerk is directed to mark this case "CLOSED."

s/ Sean J. McLaughlin
United States District Judge

cm: all parties of record ____